

BECKER & MADISON

CHARTERED  
1915 EYE STREET, N.W.  
EIGHTH FLOOR  
WASHINGTON, D.C. 20006

(202) 833-4422

TELECOPIER  
(202) 296-7458

RICHARD S. BECKER  
PAUL G. MADISON

July 21, 1994

RECEIVED

JUL 21 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

OF COUNSEL  
JAMES S. FINERFROCK  
CONSULTING ENGINEER  
SIAMAK HARANDI

William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, DC 20554

Re: In the Matter of  
Implementation of Sections  
3(n) and 332 of the  
Communications Act

Regulatory Treatment of  
Mobile Services  
GN Docket No. 93-252

Dear Mr. Caton:

Transmitted herewith on behalf of Range Corporation d/b/a Range Telecommunications is an original and eleven (11) copies of its "Emergency Petition to Dismiss Comments and Reply Comments of the American Mobile Telecommunications Association, Inc." filed with respect to the above-referenced matter.

Should any questions arise with respect to this matter, please communicate directly with this office.

Respectfully submitted,

*Richard S. Becker*

Richard S. Becker  
Attorney for Range Corporation d/b/a  
Range Telecommunications

No. of Copies rec'd  
List ARCD E

0+11

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

RECEIVED

JUL 21 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections )  
3(n) and 332 of the )  
Communications Act )

GN Docket No. 93-252

Regulatory Treatment of )  
Mobile Services )

To: The Commission

RECEIVED

JUL 21 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**EMERGENCY PETITION TO DISMISS  
COMMENTS AND REPLY COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**RANGE CORPORATION D/B/A  
RANGE TELECOMMUNICATIONS**

Richard S. Becker  
James S. Finerfrock  
Paul G. Madison  
Becker & Madison, Chartered  
1915 Eye Street, Northwest  
Eighth Floor  
Washington, DC 20006  
(202) 833-4422

Its Attorneys

Date: July 21, 1994

## TABLE OF CONTENTS

Table of Contents .....	i
Summary .....	ii
I. Introduction .....	1
II. The Interest Of Range .....	3
III. The AMTA Comments And AMTA Reply Comments Were Adopted <u>Ultra Vires</u> And Must Be Dismissed .....	4

## SUMMARY

By this Emergency Petition, Range Corporation d/b/a Range Telecommunications ("Range") requests emergency Commission action to dismiss the Comments and Reply Comments filed by the American Mobile Telecommunications Association, Inc. ("AMTA") in response to the Further Notice Of Proposed Rulemaking in the above-captioned proceeding.

By filing its Comments and Reply Comments in the above-captioned proceeding, AMTA has confirmed that it is the instrument by which Nextel Communications, Inc. ("Nextel") and its confederate, Motorola Communications, Inc. ("Motorola"), are attempting to consolidate their position as monopolists in the Specialized Mobile Radio ("SMR") industry. As a member of AMTA, and one of the dwindling number of independent providers of traditional SMR service in the country, Range is angered and saddened by AMTA's complicity in the Nextel/Motorola scheme. The time has come, however, to declare openly what the entire SMR industry and the Commission have thus far been unwilling to recognize -- Nextel, Motorola and their accomplices have quietly been able to construct a web of relationships, cross-ownership and operational alliances that constitute nothing less than a monopoly in the SMR industry. This monopoly position not only dramatically damages traditional SMR operators, like Range, who thus far have been the target of Nextel's regulatory maneuvering and overreaching, but it is ultimately the public who will pay the monopoly profits that Nextel and Motorola will reap from this unfortunate situation.

The catalyst for Range's anger arose when AMTA openly and unashamedly filed its Comments and Reply Comments unequivocally supporting Nextel's attempt (the "Nextel Proposal") to clear 10 MHz of SMR spectrum and ensure that the evacuated spectrum will be licensed only to providers of wide-area SMR service (dubbed "ESMR" by Nextel). In point of fact, AMTA filed its Reply Comments supporting the Nextel Proposal even after AMTA gave written assurances to its members that AMTA had been, and would continue to be, neutral on this issue.

The Commission must immediately recognize, however, that filing of the AMTA Comments and the AMTA Reply Comments was ultra vires. Specifically, even though AMTA purports to be a representative of the entire SMR industry, at least twelve (12) of twenty (20) members of the current Board of Directors of AMTA are "directly or indirectly affiliated" with Nextel and/or Motorola and Motorola itself is "directly or indirectly affiliated" with Nextel. This undue concentration of AMTA Board membership is in direct violation of several specific provisions of the AMTA By-Laws. Moreover, the core of Nextel/Motorola-affiliated AMTA Directors renders the AMTA Board illegally constituted in violation of AMTA

By-Laws. As a result, the advocacy decisions taken by AMTA to file the AMTA Comments and the AMTA Reply Comments in the above-captioned proceeding were ultra vires. It also appears that the AMTA Board decided to take the pro-Nextel advocacy position presented in the AMTA Reply Comments in violation of other clear procedural requirements specified in the AMTA By-Laws.

All of these facts demonstrate that the AMTA Comments and the AMTA Reply Comments submitted in the above-captioned proceeding were adopted ultra vires in direct conflict with the AMTA By-Laws. Now that these facts are clear, Range respectfully submits that the Commission must immediately reject and dismiss the AMTA Comments and AMTA Reply Comments and explicitly state that those pleadings will not be considered in the Commission's decision-making process regarding the FNPRM. Immediate and explicit Commission action is particularly important in this case because AMTA has presented itself to the Commission as a representative of the SMR industry, when, in fact, AMTA has become nothing more than the instrument of the illicit monopolistic goals of Nextel and Motorola.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections	)	GN Docket No. 93-252
3(n) and 332 of the	)	
Communications Act	)	
	)	
Regulatory Treatment of	)	
Mobile Services	)	

To: The Commission

**EMERGENCY PETITION TO DISMISS  
COMMENTS AND REPLY COMMENTS OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Range Corporation d/b/a Range Telecommunications ("Range"), by its attorneys and pursuant to Section 1.41 of the Commission's Rules,<sup>1</sup> hereby requests emergency Commission action to dismiss the Comments and Reply Comments filed by the American Mobile Telecommunications Association, Inc. ("AMTA") in response to the Further Notice Of Proposed Rulemaking in the above-captioned proceeding.<sup>2</sup> In support of this Emergency Petition, the following is respectfully shown.

**I. Introduction**

1. By filing its Comments and Reply Comments in the above-captioned proceeding, AMTA has confirmed one unmistakable conclusion -- AMTA is now the instrument by which Nextel

---

<sup>1</sup>47 C.F.R. §1.41.

<sup>2</sup>Further Notice Of Proposed Rulemaking, GN Docket No. 93-252, FCC 94-100 (May 20, 1994) (hereinafter "FNPRM"). AMTA filed its comments with respect to the FNPRM ("AMTA Comments") on June 20, 1994, and AMTA filed its reply comments with respect to the FNPRM ("AMTA Reply Comments") on July 11, 1994.

Communications, Inc. ("Nextel") and its confederate, Motorola Communications, Inc. ("Motorola"), are attempting to consolidate their position as monopolists in the Specialized Mobile Radio ("SMR") industry. As a member of AMTA, and one of the dwindling number of independent providers of traditional SMR service in the country, Range is angered and saddened by AMTA's complicity in the Nextel/Motorola scheme. The time has come, however, to declare openly what the entire SMR industry and the Commission have thus far been unwilling to recognize -- Nextel, Motorola and their accomplices have quietly been able to construct a web of relationships, cross-ownership and operational alliances that constitute nothing less than a monopoly in the SMR industry. This monopoly position not only dramatically damages traditional SMR operators, like Range, who thus far have been the target of Nextel's regulatory maneuvering and overreaching, but it is ultimately the public who will pay the monopoly profits that Nextel and Motorola will reap from this unfortunate situation.

2. In response to AMTA's refusal to protect the interests of all of its members in order to support the cause of Nextel and Motorola, Range hereby requests that the Commission dismiss the AMTA Comments and Reply Comments. As demonstrated herein, the positions taken by AMTA in both its Comments and its Reply Comments were adopted ultra vires in direct violation of the "By-Laws Of The American Mobile Telecommunications Association" ("AMTA By-Laws").<sup>3</sup> Accordingly, Range respectfully submits that the AMTA Comments and

---

<sup>3</sup>A copy of the AMTA By-Laws is included herewith as Exhibit 2.

the AMTA Reply Comments must be immediately rejected and dismissed by the Commission. Moreover, the Commission must explicitly refuse to accord any consideration whatsoever to these unauthorized pleadings in the Commission decision-making process with respect to the rule changes proposed in the FNPRM.

3. Range must emphasize that the request specified herein is in the nature of an emergency petition for Commission action in that it is likely that the Commission will adopt regulations pursuant to the FNPRM no later than August 10, 1994.<sup>4</sup> Accordingly, Range respectfully submits that the Commission must act immediately to review the important facts and allegations set forth herein before proceeding any further with consideration of the rule changes proposed in the FNPRM.

## **II. The Interest Of Range**

4. Range is an independent SMR operator licensed for and operating SMR systems in the Upper Peninsula of Michigan. Range also provides radio common carrier communications service in that area. Range is a relatively small entrepreneur with decades of experience in providing a low-cost, high-quality communications

---

<sup>4</sup>Specifically, pursuant to Section 6002(d)(3)(B) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"), Pub. L. No. 103-66, Title VI, §6002(d)(3)(B), 1078 Stat. 312, 392 (1993), Congress required that within one (1) year of the adoption of the Budget Act (*i.e.*, by August 10, 1994), the Commission must adopt regulations that will address disparities between existing regulation of common carrier services and regulation of private radio services that will be regulated as Commercial Mobile Radio Service ("CMRS") as specified in the Commission's Second Report and Order, GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486 (March 20, 1994). As a result, Range believes that the Commission will complete its review and adopt a decision pursuant to the FNPRM before August 10, 1994.



alternative to the cellular, wide-area SMR and local exchange giants that have recently been able to dominate the communications marketplace.

5. As such, Range has a vital interest in the outcome of the rulemaking proceeding initiated by the FNPRM. In point of fact, on July 11, 1994, Range and ten (10) other independent traditional SMR operators in various areas of the country filed reply comments in the above-captioned proceeding. As set forth herein, however, Range can no longer tolerate the abuse being perpetrated by AMTA in the name of the SMR industry as a whole, but for the benefit of only Nextel and Motorola. Range is filing the instant Emergency Petition to redress at least part of the damage being caused by these misdeeds.

**III. The AMTA Comments And AMTA Reply Comments Were  
Adopted Ultra Vires And Must Be Dismissed**

6. The catalyst for Range's anger arose when AMTA openly and unashamedly filed its Comments and Reply Comments unequivocally supporting Nextel's attempt to clear 10 MHz of SMR spectrum and ensure that the evacuated spectrum will be licensed only to providers of wide-area SMR service (dubbed "ESMR" by Nextel).<sup>5</sup> In

---

<sup>5</sup>In its June 20, 1994, Comments on the FNPRM ("Nextel Comments"), Nextel proposed that the Commission "clear a 10 MHz block of contiguous SMR spectrum for exclusive ESMR use within geographically-defined licensing areas and permit ESMR licensees to 'retune' traditional 'non-ESMR' co-channel SMR systems to operate on other 800 MHz private radio frequencies." E.g., Nextel Comments, p.4. [This proposal will be referred to hereinafter as the "Nextel Proposal."] Nextel defined the term "ESMR" to "refer to mobile communications systems licensed on SMR or other private radio frequencies employing digital technology in a wide-area multiple base station configuration and providing high capacity mobile telephone services competitive with cellular communications

point of fact, AMTA filed its Reply Comments supporting the Nextel Proposal even after AMTA gave written assurances to its members that AMTA had been, and would continue to be, neutral on this issue.<sup>6</sup>

7. In the AMTA Comments, AMTA stated that:

[AMTA] anticipates supporting MTA-wide, rather than self-defined, geographic boundaries. In addition, wide-area SMR spectrum cannot be considered functionally equivalent to cellular as long as SMR frequencies are not "clear"; that is, as long as wide-area SMR operators must co-exist with a multiplicity of co-equal, co-channel traditional SMR facilities scattered throughout their operating area.

AMTA Comments, p.15.

8. In the AMTA Reply Comments, AMTA went even further by wholeheartedly embracing the Nextel Proposal and reiterating the Nextel Proposal almost verbatim. The following excerpts from the AMTA Reply Comments exemplify AMTA's position:

At the recommendation of [AMTA's] Digital Switched Networks Council ("Digital Council"), AMTA is persuaded

---

systems." Id. at n.11.

<sup>6</sup>Attached hereto as Exhibit 1 is a July 6, 1994, Memorandum ("AMTA July 6 Memo") from Alan Shark, President and CEO of AMTA, and Jill M. Lyon, to all AMTA Members which specifically stated:

Did AMTA's Comments support Nextel's proposal? No. AMTA sought member opinion on the broad outline of Nextel's proposal prior to filing its Comments in this proceeding (June 20), and found there was little support for the proposal (in fact, no other ESMR licensee supported Nextel's proposal).

AMTA July 6 Memo, p.1, see id. at 2.

The AMTA July 6 Memo was issued in response to "inaccurate information [that was] being circulated regarding AMTA's position on [the Nextel Proposal.]" Id. at 1. That AMTA July 6 Memo was issued just five (5) days before AMTA filed the AMTA Reply Comments which unconditionally supported the Nextel Proposal.

that a wide-area licensing structure which includes a mechanism for creating clear 800 MHz spectrum will enable these systems to provide the effective competition to both cellular and PCS that the Commission and the Congress envisioned when the CMRS regulatory structure was adopted.

[AMTA] has also become convinced that the retuning proposed by Nextel, although not without significant costs and complexity, will ultimately produce a more compatible co-channel environment for both traditional high-power and lower-power wide-area SMR systems.

AMTA further recommends that the FCC issue only a single 800 MHz wide-area license in each MTA.

AMTA Reply Comments, p.18, 20.

9. Using its alleged position as a representative of the entire SMR industry,<sup>7</sup> AMTA has now become the pawn by which its masters, Nextel and Motorola, hope to continue the monopolization of the SMR industry by pressuring the Commission to adopt the Nextel Proposal. Range respectfully submits, however, that the Commission must immediately recognize that filing of the AMTA Comments and the AMTA Reply Comments was ultra vires. As a result, the Commission must take immediate action to dismiss those pleadings and to explicitly refuse to take AMTA's position into account during the Commission's consideration of the rule changes proposed in the FNPRM.

10. Specifically, Article XI, Section 1(a), of the AMTA By-Laws provides, in relevant part, that:

The Association shall not take advocacy positions before government agencies, except upon the affirmative vote of two-thirds of the Directors.... No request for authority to take an advocacy position shall afford the Board of Directors less than seven (7) days in which to respond.

---

<sup>7</sup>See, e.g., AMTA Comments at 2-3.

AMTA By-Laws, Article XI, §1(a).

Accordingly, before AMTA could legally have filed the AMTA Comments or the AMTA Reply Comments in the above-captioned proceeding, the Board of Directors of AMTA had to have approved the "advocacy positions" taken in those pleadings by a two-thirds vote.

11. Article VI of the AMTA By-Laws establishes the AMTA Board of Directors and sets forth its responsibilities, as well as the procedures for the eligibility, selection and service of Board members. Section 2 of Article VI specifically states, in relevant part, that:

The Board of Directors shall be composed of up to nineteen (19) entities, each of which holds a properly authorized wireless system license and is an Active Member of the Association. ... Under no circumstances may any one Active Member hold more than one seat on the Board of Directors.

Id. at Article VI, §2 (emphasis added).

Article III, Section 1(a) of the AMTA By-Laws defines an "Active Member" as:

Any entity properly authorized to provide [for-profit, two-way mobile services on frequencies assignable on an exclusive use basis], except services specifically designated by the Federal Communications Commission as Cellular and Personal Communications Services (PCS). Each Active Member shall include any and all entities properly authorized to provide such services which are owned or controlled by, which own or control, or which are directly or indirectly affiliated with the Active Member, or, if a partnership, which share a general partner(s) with the Active Member.

AMTA By-Laws at Article III, §1(a) (emphasis added); see also id. at Article II, §1(a).

When read together, these provisions of Article III, Section 1, and Article V, Section 2, of the AMTA By-Laws are supposed to prevent

undue influence by any one party who attempts to elect to the Board of Directors multiple individuals who are "owned or controlled by," "which own or control," or "which are directly or indirectly affiliated" with each other.

12. Unfortunately, through a series of incestuous transactions, Nextel and its cohort Motorola, have been able to acquire control of or become "directly or indirectly affiliated" with multiple members of the AMTA Board of Directors. Nextel relied on this core of affiliated AMTA Directors to force AMTA to emphatically support the Nextel Proposal in the above-captioned proceeding, in spite of the fact that "there was little support for the proposal" as admitted by AMTA on July 6, 1994.<sup>8</sup>

13. Specifically, the following facts demonstrate that: (1) at least twelve (12) of the members of the current Board of Directors of AMTA<sup>9</sup> are "directly or indirectly affiliated" with Nextel and/or Motorola; and (2) Motorola itself is "directly or indirectly affiliated" with Nextel.

- Richard H. Stewart, Transit Communications ("Transit")

On information and belief, Transit has or will be acquired by Dial Page, Inc. ("Dial Page"), an entity that is owned approximately thirty-five percent (35%) by

---

<sup>8</sup>AMTA July 6 Memo at 1.

<sup>9</sup>A listing of the current Board of Directors of AMTA as specified in the May, 1994, issue of AMTA's publication, "Open Channels," is attached hereto as Exhibit 3. It should be noted that there are twenty (20) Directors listed, even though Article VI, Section 2, of the AMTA By-Laws provides that, "[t]he Board of Directors shall be composed of up to nineteen (19) entities...." AMTA By-Laws at Article VI, §2. There is no readily-discernible justification for this discrepancy in the number of Board members.

Motorola.<sup>10</sup>

- Q. Irving Roberts, Roberts Communications, Inc. ("Roberts")

On information and belief, Roberts has or will be acquired by Dial Page, an entity owned approximately thirty-five percent (35%) by Motorola.<sup>11</sup>

- Wm. Tom Gerrard, Advanced Radio Comm. Services of Florida, Inc. ("Advanced")

On information and belief, Advanced has or will be acquired by Dial Page, an entity owned approximately thirty-five percent (35%) by Motorola.<sup>12</sup>

- Harold Chamberlin, Western Tech. Communications, Inc. ("Western")

On information and belief, Western is currently engaged in negotiations with Nextel pursuant to which Nextel will acquire Western.

- John A. Daskalakis, TRS Communications ("TRS")

On information and belief, TRS was acquired by Dispatch Communications, Inc. ("Discom"). Discom, in turn, recently merged with Nextel.<sup>13</sup>

- Steven E. Fulford, Uniden America Corp. ("Uniden")

On information and belief, Mr. Fulford individually owns stock in Nextel.

---

<sup>10</sup>Attached hereto as Exhibit 4 is an article from the publication, Radio Communications Report, confirming that, "Motorola also is set to get a 30 percent stake in OneComm Corp., an Englewood, Colo.-based SMR operator, and a 34.5 percent stake in Greenville, S.C.-based Dial Page Inc." "Justice Seeking Additional Info On SMR Deals," Radio Communications Reports, p.1, 21 (April 25, 1994).

<sup>11</sup>See note 10, supra.

<sup>12</sup>See note 10, supra.

<sup>13</sup>See November 15, 1993, News Release by Nextel ("November 15 News Release"), reporting revenues for quarter ending September 30, 1993, p.1. A copy of the November 15 News Release is attached hereto as Exhibit 5.

- Michael D. Kennedy, Motorola

Motorola itself has a seat on the AMTA Board of Directors. It must also be emphasized that Motorola is set to sell 2,500 radio channels in 21 states to Nextel, as well as \$260 million toward equipment purchases for Nextel's digital enhanced SMR network, in exchange for a twenty percent (20%) stake in Nextel.<sup>14</sup>

- William R. Neville, Crescent Communications ("Crescent")

On information and belief, Crescent has been sold to OneComm Corp. ("OneComm"). As set forth below, both Motorola and Nextel own OneComm.

- Morgan E. O'Brien, Esq., Nextel

Nextel also has its own seat on the AMTA Board. As set forth in the preceding item, Nextel is "directly or indirectly affiliated" with Motorola in contravention of Article III, Section 1(a), and Article VI, Section 2, of the AMTA By-Laws.

- Steve Schovee, OneComm

Motorola owns or will own a thirty percent (30%) stake in OneComm.<sup>15</sup> On information and belief, Nextel also owns or will own an interest in OneComm.

- Richard G. Sommers, American Mobile Systems, Inc. ("AMS")

Nextel owns or will own a controlling interest in AMS.<sup>16</sup>

- John Wehmann, Questar Corporation ("Questar")

Attached hereto as Exhibit 7 is an October 18, 1993, News Release by Nextel confirming that Nextel has or will complete a merger with Questar.

---

<sup>14</sup>See "Justice Seeking Additional Info On SMR Deals," Radio Communications Reports, p.1 (April 25, 1994); see also November 15, News Release at 2, 3.

<sup>15</sup>See "Justice Seeking Additional Info On SMR Deals," Radio Communications Reports, p.1, 21, (April 25, 1994).

<sup>16</sup>See October 27, 1993, News Release by Nextel relating to a proposed merger between Nextel and PowerFone Holdings, Inc. This News Release is attached hereto as Exhibit 6. As part of that News Release, Nextel confirmed its agreement to acquire a controlling interest in AMS. Id. at 1.

14. As a result of these facts, each of the above-specified AMTA Directors is "directly or indirectly affiliated" with Nextel and Motorola. As such, these individuals cannot be considered to be separate "Active Members" pursuant to the definition specified in Article III, Section 1(a), of the AMTA By-Laws. Accordingly, it is a violation of Article VI, Section 2, of the AMTA By-Laws for each of these individuals to occupy an independent seat on the AMTA Board. Equally as important, this aggregation of power in Nextel and Motorola directly contravenes the prohibition specified in Article VI, Section 2, of the AMTA By-Laws, that, "[u]nder no circumstances may any one Active Member hold more than one seat on the Board of Directors." In view of the fact that the AMTA Board of Directors is, and has been, illegally constituted in violation of the AMTA By-Laws, the advocacy decisions taken by AMTA to file the AMTA Comments and the AMTA Reply Comments in the above-captioned proceeding were ultra vires.<sup>17</sup>

15. Range must also emphasize that it appears that the AMTA Board may have decided to take the pro-Nextel advocacy position presented in the AMTA Reply Comments without having waited the seven (7) day period specified in Article XI, Section 1(a), of the AMTA By-Laws. Specifically, in the AMTA Reply Comments, AMTA stated that it adopted the Nextel Proposal "[a]t the recommendation

---

<sup>17</sup>It also appears that the commonality between the above-listed Directors renders it impossible for there to be a quorum for Board meetings as required by Article VII, Section 2, of the AMTA By-Laws. Accordingly, any action taken at a Board meeting that was not properly constituted by the specified quorum would be ultra vires. See AMTA By-Laws at Article VII, §2.



of [AMTA's] Digital Switched Networks Council ("Digital Council")."<sup>18</sup> On information and belief, however, a decision to support the Nextel Proposal was not made by AMTA's Digital Council until a meeting of the Digital Council held on Thursday July 7, 1994 -- only four (4) days prior to filing of the AMTA Reply Comments on July 11, 1994. Moreover, it is Range's understanding that the AMTA Board voted on the Digital Council's recommendation on July 8, 1994 -- just one (1) day after the Digital Council's decision was adopted and submitted to the Board for authorization. It is clear, therefore, that the Board was not afforded the seven (7) day period required by Article XI, Section 1(b), before the Board decided to adopt the advocacy position in support of the Nextel Proposal specified in the AMTA Reply Comments. Once again, in its haste to do the bidding of its masters, AMTA and the AMTA Board acted ultra vires in deciding to support the Nextel Proposal in the AMTA Reply Comments.

16. All of these facts demonstrate that the AMTA Comments and the AMTA Reply Comments submitted in the above-captioned proceeding were adopted ultra vires in direct conflict with the AMTA By-Laws. Now that these facts are clear, Range respectfully submits that the Commission must immediately reject and dismiss the AMTA Comments and AMTA Reply Comments and explicitly state that those pleadings will not be considered in the Commission's decision-making process regarding the FNPRM. Immediate and explicit Commission action is particularly important in this case because AMTA has presented

---

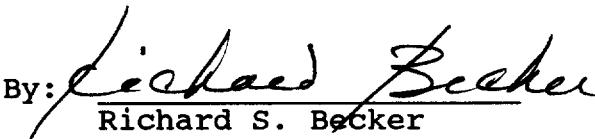
<sup>18</sup>AMTA Reply Comments at 18.

itself to the Commission as a representative of the SMR industry, when, in fact, AMTA has become nothing more than the instrument of the illicit monopolistic goals of Nextel and Motorola.

**WHEREFORE,** for all of the foregoing reasons, Range respectfully requests that the Commission act immediately to: (1) reject and dismiss the AMTA Comments and AMTA Reply Comments in the above-captioned proceeding; and (2) explicitly state that Commission decision-making in the above-captioned proceeding will not in any way be influenced by the positions taken by AMTA.

Respectfully submitted,

**RANGE CORPORATION D/B/A  
RANGE TELECOMMUNICATIONS**

By:   
Richard S. Becker  
James S. Finerfrock  
Paul G. Madison

Its Attorneys

Becker & Madison, Chartered  
1915 Eye Street, Northwest  
Eighth Floor  
Washington, DC 20006  
(202) 833-4422

Date: July 21, 1994

**Exhibit 1**

**AMTA JULY 6 MEMO**

# AMTA

American Mobile Telecommunications Association

PRESIDENT & CEO  
Alan R. Shark, CAE

GENERAL COUNSEL  
Elizabeth R. Sachs, Esq.  
Lukas, McGowan, Nance & Gutierrez

## MEMORANDUM

**TO:** AMTA Members

**FROM:** Alan Shark  
Jill M. Lyon

**DATE:** July 6, 1994

**RE:** 800 MHz Licensing -- AMTA Position

---

It has come to our attention that inaccurate information is being circulated regarding AMTA's position on Nextel Communications' 800 MHz wide-area licensing proposal. Nextel made its proposal in Comments in the ongoing CMRS Technical Rules proceeding before the FCC. The following questions should clarify AMTA's position on this issue:

**1. What is the outline of Nextel's wide-area licensing proposal?**

Nextel proposed that the FCC allocate channels 401-600 of the SMR band (861-865 MHz) for bloc use by ESMR licensees. These would be licensed on an MTA basis; where only one ESMR operator existed in the MTA as of a particular date, that operator would receive a bloc license for all 200 of these channels. All existing traditional SMR operators would be moved from these channels to other 800 MHz channels (1-400) now held by the ESMR operator, at the ESMR operator's expense. Nextel anticipated that most, if not all, of the cost would be incurred in retuning mobiles and base stations to the new frequencies.

Should there be more than one ESMR operator in the MTA, Nextel proposed that the FCC would allocate the 200 bloc frequencies on a pro rata basis, based on each operator's existing mobile count. However, each operator would be allowed to keep additional channels below #401 for ESMR use, up to 200 each.

**2. Did AMTA's Comments support Nextel's proposal?**

No. AMTA sought member opinion on the broad outline of Nextel's proposal prior to filing its Comments in this proceeding (June 20), and found there was little support for the proposal (in fact, no other ESMR licensee supported Nextel's proposal).

Therefore, our comments merely noted that wide-area licensees do not currently have contiguous, "clear" spectrum as cellular licensees do, and that we were working with the industry and the FCC to arrive at a consensus on an appropriate wide-area licensing plan. AMTA took no position on the Nextel proposal.

**3. Will AMTA include a wide-area licensing proposal in its Reply Comments?**

Only if consensus is reached on the best plan for the industry. The FCC has allowed very little time for consideration: reply comments are due July 11, and new rules for "substantially similar" services, such as ESMR and cellular, must be released by August 10. AMTA's Digital Council has met in an effort to devise a wide-area licensing proposal and is still working on a plan; if the Council reaches consensus, its proposal must go to AMTA's Board and be approved in time to be included in our Reply Comments next Monday. If no consensus is reached, or if the Board does not approve a proposal, we will not address wide-area licensing in our Reply Comments.

**4. How can I indicate my opinion of Nextel's plan?**

The FCC will consider Reply Comments from any interested party. If you wish to file comments, they must arrive at the Commission by 5:30 p.m. on Monday, July 11. Your comments may be in an informal form; however, they should state that you (or your business) are filing Reply Comments on the Further Notice of Proposed Rule Making, GN Docket No. 03-252, Implementation of Sections 3(n) and 332 of the Communications Act. You should explain why you are an interested party (for example, that proposed rule changes will directly impact your status as an FCC licensee, if this is the case).

Send the original and four copies to:

William F. Caton, Acting Secretary  
FCC  
1919 M Street, N.W., Room 222  
Washington, DC 20554

We hope this clarifies AMTA's position on this important issue. If there are any further questions, please do not hesitate to call AMTA's Washington office.

tlusertques700.mmo

**Exhibit 2**

**AMTA BY-LAWS**

**BY-LAWS  
OF THE  
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION**

**ARTICLE I: Name, Location and Organization**

**SECTION 1.** The name of the organization shall be the American Mobile Telecommunications Association (AMTA).

**SECTION 2.** The principal office of the Association, unless the Board of Directors shall direct otherwise, shall be in the Metropolitan Area of Washington, D.C.

**SECTION 3.** The organization shall be organized as an incorporated, not-for-profit association.

**ARTICLE II: Objectives**

**SECTION 1.** The objectives of the Association shall be:

- (a) To provide an instrumentality through which private carrier ~~systems~~ systems licensed by the Federal Communications Commission ~~to provide~~ to provide for-profit, two-way mobile services on frequencies assignable on an exclusive use basis ~~(Private Carriers)~~ may achieve optimal use of frequency assignments allocated for their systems.
- (b) To represent the interests of its members in all federal regulatory or legislative activities affecting the interests of owners of Private Carrier ~~systems~~ systems.
- (c) To cooperate with other groups, organizations, associations, and equipment manufacturers to bring about efficient use of the electromagnetic spectrum.
- (d) To distribute information and data concerning technical, regulatory, and business developments affecting Private Carrier ~~systems~~ systems.

**ARTICLE III: Membership**

**SECTION 1.** The following shall be eligible for active, voting membership (Active Member) in accordance with the terms hereinafter set forth:

- (a) Any corporation, partnership, sole proprietorship, individual, or other entity ~~currently licensed as a Private Carrier system under the Rules and Regulations of the Federal Communications Commission, or recognized by the Federal Communications Commission as a tentative~~

~~selected or alternate in any Private Carrier system lottery proceeding, but the latter shall not be entitled to vote until the Federal Communications Commission has issued its Private Carrier system authorization.~~

~~Each Active Member shall include any and all entities licensed by the Federal Communications Commission as Private Carrier systems~~ which are owned or controlled by, which own or control, or which are directly or indirectly affiliated with the Active Member, or, if a partnership, which share a general partner(s) with the Active Member.

SECTION 2. The following shall be eligible for associate, non-voting membership (Associate Member) in accordance with the terms hereinafter set forth:

- (a) ~~Any corporation, partnership, sole proprietorship, individual, or other entity engaged in the manufacture of Private Carrier system equipment which is not itself authorized by the Federal Communications Commission as a Private Carrier licensee~~
- (b) ~~Any corporation, partnership, sole proprietorship, individual, or other entity engaged in providing services or supplies used by Private Carrier system operators or users which is not itself authorized by the Federal Communications Commission as a Private Carrier licensee.~~
- (c) Any corporation, partnership, sole proprietorship, individual or other entity which would be eligible for active membership under Article III, Section 1(a), but which operates all of its systems pursuant to a management agreement(s) with an Active Member and which is sponsored for associate membership by that Active Member.

SECTION 3. Application for membership shall be made in writing to the Board of Directors upon a form approved by the Board of Directors. The applicant shall agree, if the application is approved, to abide by the By-Laws of the Association and to pay the Association such dues as are properly assessed by the Board of Directors.



~~SECTION 4. Any member may terminate membership at any time by giving notice in writing to the Association.~~

SECTION 5. Any member whose dues are in arrears for a period exceeding three months from the date of billing shall be deemed "not in good standing" and shall not be entitled to vote or take part in the Association's activities. The Board of Directors may, if it deems fit, order any such "member not in good standing" removed from the Association's membership.

SECTION 6. Any Active Member, all of whose Private Carrier licenses [REDACTED] are cancelled, revoked, transferred, or assigned by the Federal Communications Commission [REDACTED], or whose Private Carrier licenses are surrendered to the Federal Communications Commission [REDACTED], shall so notify the Association and shall be removed from the Association's active membership as of the date on which the licenses were cancelled, revoked, transferred, assigned, or surrendered.

#### ARTICLE IV: Membership Dues and Budget

SECTION 1. The annual dues for each type of Association membership shall be prescribed by the Board of Directors on such basis as the Board of Directors may determine. The dues shall be assessed upon all entities which comprise the membership, as defined in Article III, Sections 1 and 2.

SECTION 2. At its annual meeting, hereinafter defined, the Board of Directors shall approve a budget covering activities of the Association for the ensuing fiscal year. A proposed budget shall be prepared by the President in conjunction with the Financial Management Committee and shall be submitted to the Board of Directors and available to any other interested member at least thirty (30) days before the annual meeting. The fiscal year shall commence on April 1.

#### ARTICLE V: Association Meetings

SECTION 1. The regularly scheduled meetings of the Association shall be held at a time and place fixed by the Board of Directors. Special meetings of the Association may be called by the Chairman, by eleven (11) of the Directors, or upon written request of one-third of the Association members.

SECTION 2. A notice stating the time, place, and purpose of each regularly scheduled Association meeting shall be mailed to the